

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78817; File No. SR-NYSEMKT-2016-84)

September 12, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 67 - Equities to Modify Certain Data Collection Requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 29, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 67 - Equities to modify certain data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE MKT, and several other self-regulatory organizations (the “Participants”) filed with the Commission, pursuant to Section 11A of the Act<sup>4</sup> and Rule 608 of Regulation NMS thereunder,<sup>5</sup> the Plan to Implement a Tick Size Pilot Program (the “Plan”).<sup>6</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.<sup>7</sup> The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.<sup>8</sup>

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment

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<sup>4</sup> 15 U.S.C. 78k-1.

<sup>5</sup> 17 CFR 242.608.

<sup>6</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>7</sup> See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>8</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

of \$0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.<sup>9</sup> Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.<sup>10</sup> Pilot Securities in the third test group (“Test Group Three”) will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the “Trade-at” requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.<sup>11</sup> In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS<sup>12</sup> will apply to the Trade-at requirement.

The Plan also requires a Trading Center<sup>13</sup> or a Market Maker<sup>14</sup> to collect and transmit certain data to its designated examining authority (“DEA”), and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the

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<sup>9</sup> See Section VI(B) of the Plan.

<sup>10</sup> See Section VI(C) of the Plan.

<sup>11</sup> See Section VI(D) of the Plan.

<sup>12</sup> 17 CFR 242.611.

<sup>13</sup> The Plan incorporates the definition of a “Trading Center” from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a “Trading Center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” See 17 CFR 242.600(b).

<sup>14</sup> The Plan defines a Market Maker as “a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.”

Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid and National Best Offer quoted price.

With respect to Market Makers, Appendix B.III requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics. Appendix B.IV requires a Participant to collect data related to Market Maker participation with respect to each Market Maker engaging in trading activity on a Trading Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.<sup>15</sup> On November 6, 2015, the SEC exempted the Participants from implementing the pilot until October 3, 2016.<sup>16</sup> As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016.

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<sup>15</sup> See Approval Order at 27533 and 27545.

<sup>16</sup> See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4-657).

On March 29, 2016, NYSE MKT filed with the Commission a proposed rule change to adopt NYSE MKT Rule 67(b) - Equities to implement the data collection requirements of the Plan.<sup>17</sup> On December 9, 2015, NYSE MKT submitted an exemptive request to the Commission, seeking an exemption from certain data collection and reporting requirements set forth in the Plan.<sup>18</sup> On April 4, 2016, the Commission granted exemptive relief from complying with certain data collection and reporting requirements in the Plan.<sup>19</sup>

NYSE MKT now proposes to further amend Rule 67 - Equities to modify additional data collection and reporting requirements. First, Appendix B.I.a(21) through B.I.a(27) currently requires that Trading Centers report the cumulative number of shares of cancelled orders during a specified duration of time after receipt of the order that was cancelled. NYSE MKT and the other Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket irrespective of the duration of time after order receipt, i.e., without a time increment, to better differentiate orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to

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<sup>17</sup> See Securities Exchange Act Release No. 77478 (March 30, 2016), 81 FR 19665 (April 5, 2016) (Immediate Effectiveness of Proposed Rule Change Adopting Requirements for the Collection and Transmission of Data Pursuant to Appendices B and C of the Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR-NYSEMKT-2016-40).

NYSE MKT also submitted a proposed rule change to implement the quoting and trading requirements of the Plan. See Securities Exchange Act Release No. 77949 (May 31, 2016), 81 FR 36367 (June 6, 2016) (Immediate Effectiveness of Proposed Rule Change Implementing the Quoting and Trading Provisions of the Plan to Implement a Tick Size Pilot Program) (SR-NYSEMKT-2016-56).

<sup>18</sup> See Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated December 9, 2015 (“Exemptive Request”).

<sup>19</sup> See letter from John C. Roeser, Associate Director, Division of Trading and Markets, Commission, to Sherry Sandler, Associate General Counsel, NYSE MKT, dated April 4, 2016.

cancel the order if no execution could be immediately obtained. NYSE MKT, therefore, proposes to modify Supplementary Material .30 to provide that unexecuted Immediate or Cancel orders shall be categorized separately for purposes of Appendix B.I.a(21) through B.I.a(27).

The second change relates to the reporting of daily market quality statistics pursuant to Appendix B.I. Currently, Appendix B.I sets forth categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. NYSE MKT and the other Participants have determined that it is appropriate to include an order type for limit orders priced more than \$0.10 away from the NBBO for purposes of Appendix B reporting. NYSE MKT therefore proposes to amend Supplementary Material .50 to provide that limit orders priced more than \$0.10 away from the NBBO shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (22). These orders are not currently required to be reported pursuant to Appendix B, and NYSE MKT and the other Participants believe that requiring the reporting of such orders will produce a more comprehensive data set.

The third change relates to the reporting of market quality statistics pursuant to Appendix B.I for a variety of order types, including inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), and near-the-quote resting limit orders (within \$0.10 of the NBBO) (14). NYSE MKT and the other Participants believe that it is appropriate to require Trading Centers to report all orders that fall within these categories, and not just those orders that are “resting.” NYSE MKT, therefore, proposes to amend Supplementary Material .50 to make this change.

In the fourth change, NYSE MKT proposes to add new Supplementary Material .100 to modify the manner in which market maker participation statistics are calculated. Currently,

Appendix B.IV provides that market maker participation statistics shall be calculated based on share participation, trade participation, cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation, and outside-the-quote share (trade) participation. NYSE MKT and the other Participants have determined that it is appropriate to add the count of the number of Market Makers used in the calculation of share (trade) participation to each category. NYSE MKT is therefore proposing this change as part of Supplementary Material .100. In addition, Appendix B.IV(b) and (c) currently require that, when aggregating across Market Makers, share participation and trade participation shall be calculated using the share-weighted average and trade-weighted average, respectively. NYSE MKT and the other Participants believe that it is more appropriate to calculate share and trade participation by providing the total count of shares or trades, as applicable, rather than weighted averages, and NYSE MKT is therefore proposing this change as part of Supplementary Material .100.

The fifth change relates to the NBBO that a Trading Center is required to use when performing certain quote-related calculations. When calculating cross-quote share (trade) participation pursuant to Appendix B.IV(d) and inside-the-quote share (trade) participation pursuant to Appendix B.IV(e), the Plan requires the Trading Center to utilize the NBBO at the time of the trade for both share and trade participation calculations. When calculating at-the-quote share (trade) participation and outside-the-quote share (trade) participation pursuant to Appendix B.IV(f) and (g), the Plan allows the Trading Center to utilize the National Best Bid or National Best Offer (NBBO) at the time of or immediately before the trade for both share and trade participation calculations. NYSE MKT and the other Participants believe that it is appropriate to calculate all quote participation (cross-quote share (trade) participation, inside-the-

quote share (trade) participation, at-the-quote share (trade) participation and outside-the-quote share (trade) participation) solely by reference to the NBBO in effect immediately prior to the trade. NYSE MKT therefore proposes to make this change as part of Supplementary Material .100.

Finally, NYSE MKT proposes to change the end date until which the Pre-Pilot Data Collection Securities shall be used to fulfill the Plan's data collection requirements. Currently, Supplementary Material .90 provides that Pre-Pilot Data Collection Securities are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. NYSE MKT and the other Participants believe that it is appropriate to use the Pilot Securities to satisfy the Plan's data collection requirements prior to the commencement of the Pilot. Accordingly, NYSE MKT is revising Supplementary Material .90 to provide that the Pre-Pilot Data Collection Securities shall be used to satisfy the Plan's data collection requirements through thirty-one days prior to the Pilot Period, after which time the Pilot Securities shall be used for purposes of the data collection requirements.<sup>20</sup>

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<sup>20</sup> After regular trading hours on September 2, 2016, the national securities exchanges will establish which securities will be included as Pilot Securities for purposes of the Plan. NYSE MKT and the other Participants have determined that members should use the Pilot Securities list for data collection purposes once it becomes available. Thus, the proposed rule change requires that, beginning thirty days prior to the first day of the Pilot Period – *i.e.*, September 3, 2016 – NYSE MKT and NYSE MKT members will comply with the data collection obligations of the Plan by collecting data on the Pilot Securities. As a result, beginning on September 3, 2016, members must migrate from using NYSE MKT's published Pre-Pilot Data Collection Security list and begin using the Pilot Securities list. September 2, 2016 will be the last day that members use the Pre-Pilot Data Collection Security list.

As noted in Item 2 of this filing, NYSE MKT has filed the proposed rule change for immediate effectiveness. NYSE MKT has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>22</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

NYSE MKT believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist NYSE MKT in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. NYSE MKT believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE MKT notes that the proposed rule change implements the provisions of the Plan, and is designed to assist NYSE MKT in meeting its regulatory obligations pursuant to the Plan.

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<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

NYSE MKT also notes that, other than the change to require use of the Pilot Securities beginning thirty days prior to the beginning of the Pilot Period, the proposed changes will only affect how NYSE MKT and Participants that operate Trading Centers collect and report data. NYSE MKT notes that, with respect to the change to require the use of the Pilot Securities beginning thirty days prior to the start of the Pilot Period, the proposed change reduces the number of securities on which affected members otherwise would have been required to collect data pursuant to the Plan and NYSE MKT Rule 67 - Equities. In addition, the proposed rule change applies equally to all similarly situated members. Therefore, NYSE MKT does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>23</sup> and Rule 19b-4(f)(6) thereunder.<sup>24</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6)<sup>25</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),<sup>26</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30 day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the Commission hereby waives the 30 day operative delay and designates the proposed rule change to be operative upon filing with the Commission.<sup>27</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>28</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>27</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>28</sup> 15 U.S.C. 78s(b)(2)(B).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-84 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2016-84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2016-84 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

Robert W. Errett  
Deputy Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).